

the policy of insurance on said vessel that the defendant proposed to pay the complainant in full settlement of all his claims and for an assignment back to the defendant of said policy, the said sum of \$2000."

If, therefore, we are to give credit to the answer, and upon this motion, and in the absence of countervailing proof, the responsive statements of the answer must be credited, the balance appearing to be due from the defendant upon the accounts furnished him by the opposite party had nothing at all to do with his offer to pay the two thousand dollars, that offer being wholly irrespective of that balance, and founded upon an examination of the items comprising the account with many of which the defendant supposed he had just ground of complaint.

No doubt is entertained of the jurisdiction of this court to give relief to parties who have done acts or entered into contracts under a mistake or ignorance of a material fact. And the power of the court to grant relief in such cases is not confined to cases in which a fact has been studiously suppressed or concealed by one of the parties, which would amount to fraud, but it embraces many cases of innocent ignorance and mistake on both sides. For when the real intention of the parties has been disappointed by a mutual error in regard to a material ingredient in the contract, it is of the utmost importance that some court should have the power to correct the error and make the contract what it was really intended to be. About these principles there can be no dispute. 1 *Story's Eq.*, sec. 141, *et seq.*

And it is now settled in this state, that there are many cases in which parol evidence at the instance of the complainant may be received to rectify a contract in writing, and in which the contract so rectified will be specifically executed. The opinion of Mr. Chancellor Kent, in the case of *Gillespie vs. Moon*, 2 *Johns. Ch. Rep.*, 585, maintaining this doctrine, received the full sanction of the Court of Appeals in this state, in *Moale vs. Buchanan et al*, 11 *G. & J.*, 314.

It is not, however, in every case of mistake, even of a material fact, that the court will grant relief, for if the mistake is the result of the party's carelessness, or inattention, the court will not interfere in his behalf, its policy being to administer